

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

JEFFREY NALLY,

Plaintiff,

v.

**CIVIL ACTION NO. 3:12-CV-128
(JUDGE GROH)**

STAN KING, et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on January 3, 2013 [Doc. 16]. In that filing, the magistrate judge recommended that this Court dismiss the Plaintiff's 42 U.S.C. §1983 Complaint without prejudice for failure to exhaust administrative remedies.

Pursuant to 28 U.S.C. §636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the plaintiff's right to appeal this Court's Order. 28 U.S.C. §636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d

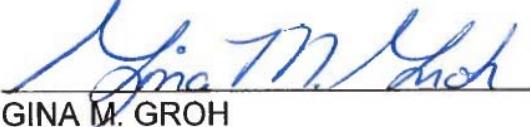
91, 94 (4th Cir. 1984). Objections to Magistrate Judge Kaull's R & R were due within fourteen (14) days of being served with a copy of the same, pursuant to 28 U.S.C. §636(b)(1) and Fed. R. Civ. P. 72(b). The docket reflects that service was accepted on January 7, 2013 [Doc. 17]. Objections were thus due by January 24, 2013.¹ Neither party filed objections to the R & R. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's Report and Recommendation [Doc. 16] should be, and hereby is, **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Plaintiff's 42 U.S.C. §1983 Complaint [Doc. 11] is hereby **DISMISSED WITHOUT PREJUDICE**, and this matter is **ORDERED STRICKEN** from the active docket of this Court. The Clerk is **DIRECTED** to enter judgment for the Defendants.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to issue a certified copy to the *pro se* Plaintiff.

DATED: February 15, 2013.



GINA M. GROH
UNITED STATES DISTRICT JUDGE

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See Fed. R. Civ. P. 6(d) (three additional days are added to the fourteen provided for in 28 U.S.C. §636(b)(1) and Fed. R. Civ. P. 72(b)).